



## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 648

[Docket No. 210716-0148; RTID 0648-XB394]

#### **Fisheries of the Northeastern United States; Atlantic Mackerel; Incidental Possession Limit Implemented for the Remainder of 2021**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule.

**SUMMARY:** NMFS is implementing a catch limit of 5,000 lb (2,268 kg) for all Atlantic mackerel permit holders for the remainder of the 2021 fishing year. This action is intended to reduce potential Atlantic mackerel overfishing based on new 2021 assessment findings.

**DATES:** Effective [*insert date of publication in the FEDERAL REGISTER*], through December 31, 2021.

**ADDRESSES:** The supporting documents for the action are available upon request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. These documents are also accessible via the Internet at <http://www.mafmc.org>.

**FOR FURTHER INFORMATION CONTACT:** Aly Pitts, Fishery Management Specialist, (978) 281-9352.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

The Mid-Atlantic Fishery Management Council manages the Atlantic mackerel fishery under the Mackerel, Squid, and Butterfish (MSB) Fishery Management Plan

(FMP). Section 302(g)(1)(B) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) states that the Scientific and Statistical Committee (SSC) for each regional fishery management council shall provide its Council ongoing scientific advice for fishery management decisions, including recommendations for acceptable biological catch (ABC), preventing overfishing, ensuring maximum sustainable yield, and achieving rebuilding targets. The ABC is a level of catch that accounts for the scientific uncertainty in the estimate of the stock's defined overfishing level (OFL). The regulations implementing the MSB FMP require the Council's MSB Monitoring Committee to develop specification recommendations for each species based upon the ABC advice of the Council's SSC. The regulations at 50 CFR 648.22(e) allow the Regional Administrator, in consultation with the Council, to adjust specifications, including possession limits, during the fishing year.

At its July 2021 meeting, the Council's SSC reviewed the 2021 management track assessment results, which concluded that Atlantic mackerel remains overfished and overfishing is occurring. To date, the U.S. commercial fishery has landed over 5,200 mt of Atlantic mackerel during 2021. Combined with an estimated 4,000 mt of Canadian catch and another 2,500-3,500 mt of U.S. recreational catch, total Atlantic mackerel catch in 2021 will likely exceed the updated OFL estimate of 11,622 mt from the June 2021 management track assessment. Based on this information, the SSC recommended that measures be implemented to eliminate or minimize additional catch during the current year to reduce the potential biological impacts of 2021 catch levels. We do not expect catch to exceed the OFL for the remainder of the year under the 5,000 lb (2,268 kg) possession limit. The Council requested that NOAA Fisheries take action to reduce potential mackerel harvest in 2021 at its August 2021 meeting.

#### **Atlantic Mackerel Possession Limit for 2021**

This rule implements a possession limit of 5,000 lb (2,268 kg) for the remainder of the 2021 fishing year for all federally permitted Atlantic mackerel vessels. The regulations currently require that when 100 percent of the Atlantic mackerel domestic annual harvest (DAH) is projected to be landed, the Regional Administrator will reduce the possession limit to 5,000 lb (2,268 kg) for both limited access and open access permit holders. This possession limit allows bycatch of Atlantic mackerel while not exceeding the ABC. This action does not make changes to any other current commercial management measures.

On October 7, 2021, we determined that under the National Environmental Policy Act (NEPA) this action is categorically excluded from requirements to prepare either an Environmental Impact Statement or an Environmental Assessment under NEPA.

The changes to the Atlantic mackerel possession limits included in this action were analyzed during the development of Framework 13 (October 30, 2019, 84 FR 58053). A 5,000 lb (2,268 kg) possession limit was included in the range of alternatives. The public had an opportunity to comment on the 5,000 lb (2,268 kg) possession limit during the development of the Framework 13. The public also had the opportunity to participate in the SSC and Council meetings discussing the current Atlantic mackerel stock status determination and, at the Council meeting, the request for action to reduce mackerel harvest in 2021. These revised possession limits reduce potential mackerel harvest in 2021 in order to minimize fishing impacts on the stock while the Council develops a revised rebuilding plan.

### **Classification**

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 648, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

NMFS finds good cause pursuant to 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3) to waive prior notice and the opportunity for public comment and the delayed effectiveness because it would be contrary to the public interest and impracticable. This action reduces the Atlantic mackerel possession limit based on new assessment information that only recently became available. This adjustment is allowed pursuant to NMFS regulatory in-season authority at 50 CFR 648.22(e). A delay would be contrary to the public interest for the Atlantic mackerel fishery. This rule is being issued at the earliest possible date. The revised management measures would potentially reduce impacts of overfishing on the Atlantic mackerel fishery while a revised rebuilding plan is developed. Action to reduce Atlantic mackerel harvest in 2021 was discussed during the SSC review of the latest Atlantic mackerel stock assessment, as well as at the August 2021 Council meeting where a request was made for NMFS to take emergency action to reduce mackerel harvest while a rebuilding plan is developed. Fishery stakeholders had the opportunity to participate and comment on a potential adjustment to the 2021 measures at these meetings and are anticipating action to reduce mackerel harvest in 2021. This rule should be effective as soon as possible to fully realize the intended benefits to the resource. Where the public has had an opportunity to review the development of the Council motion to reduce Atlantic mackerel catch for the remainder of 2021 based on the best available science (the purpose of this action), a delay in its effectiveness would not provide any benefits that would outweigh the need to implement this adjustment as quickly as possible. Failure to implement this action as quickly as possible could result in additional 2021 catch that could have potential negative biological impacts, as well as the potential to result in lower catch limits in the future than would otherwise be required by the new rebuilding plan.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: October 8, 2021.

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Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries,

National Marine Fisheries Service.

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